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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1113~~ 85

PLACID OIL COMPANY and LA-TERRE CO., INC.,

Petitioners,

—v.—

UNION PRODUCING COMPANY and TEXAS GULF PRODUCING COMPANY,

Respondents.

PETITIONERS' REPLY BRIEF

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I. THE CASE PRESENTS A FEDERAL QUESTION.

Respondents have suggested that this case is quite innocuous. As they see it, the decision below has no significance to anyone other than the parties and, the Court of Appeal did no more than resolve a question of intent. The bother is that this is not what the Court of Appeal said, and it is not what the Court of Appeal did.

Federal authority for over a century had fixed the East Range Line of Township 20 South, Range 17 East as the line surveyed by Connelly in 1837, and the West Range Line of Township 20 South, Range 18 East as the line surveyed by Gorlinski in 1855. The Court of Appeal wiped these lines out and held that ". . . the controlling range

line . . . is the one established by Foster and Walker in 1831. . . ." (Appendix to Petition p. 55b)

To suggest that the Court of Appeal merely determined the intent of the parties is to ignore both that court's opinion and judgment. The Court recited at the outset of its opinion that the dispute ". . . was completely dependent upon *location* of the correct range line . . ." (App. p. 18b). The suit sought ". . . a judgment *determinative* of the ground location of the property . . ." (App. p. 24b). "The District Court *fixed* the ground location . . ." (*ibid.*). It was not possible to survey the actual lands under lease ". . . *until the courts locate* the proper boundaries of these two sections . . ." (App. p. 35b). "[T]he question which must be first settled is *the legal bounds of the two sections* involved here because of the overlapping surveys. Once the boundaries . . . are *legally fixed* it will be a simple matter to locate the property as described" (App. p. 36b). "We are not confronted with a surveying problem but a *judicial* one" (App. p. 37b). "[W]e are thoroughly in accord with the conclusion of Mr. Smith . . . that is *it is the province of the court* and not of the surveyors *to decide what shall be the eastern boundary* of Township 20 South, Range 17 East and the western boundary of Township 20 South, Range 18 East. . . ." "Counsel for defendants-appellees contend that the court has no *jurisdiction* to recognize a common range line as a boundary between . . ." the two Townships (App. pp. 39-40b). *"A decision must be reached which fixes the location* of the east boundary, or range line, of [the two Townships], this range line to be the common boundary between these two ranges in Township 20" (App. p. 46b). The survey lines accepted by Federal

authority for over a century were, whatever the Federal Government may think, *"unauthorized and legally without any effect"* (App. p. 50b). Indeed, the established lines were even *"erroneous and illegal"* (App. p. 54b). The Court of Appeal decreed that whatever may have been Federal practice for over a century, the line "located on the ground" should be the line "surveyed, run and marked in or about 1831 by A. H. Foster and I. N. Walker" (App. p. 57b). (All emphasis supplied)

So to say that the issue presented is one of intent is to turn this case on its head. To reach the result it reached, the Court of Appeal first had to establish a new "corrected" common range line between the two Federal Townships. Then, and only then, could it look to the lease between the parties and say, "This is what they intended." What the parties "intended," in this artificial sense, is perfectly clear: they intended to take property described by Federal Township boundaries. The only issue was, what were those Township boundaries? Respondents say to this, "The Court found that Foster & Walker is the proper line, though neither party could have guessed it at the time." (It was nowhere on any of the charts, official or unofficial.) They argue that when the parties stipulated to leases based on the Federal survey system, they intended whatever Federal township boundaries a state court might someday decide were the correct ones. Thus, when the Court below held that the two Federally-established surveys were illegal, they say, and reinstated a survey which had not been recognized for over a century by Federal authority, it was creating the line the parties intended in the first place. *Post hoc, propter hoc.*

If the case turned on the intent of these parties, then its effects would be limited to the parties. The Court below, however, was quite clear that it was establishing "the" boundary, not just for this case but for all property owners in the area, whether they were parties to the lease contract or not. It said: "As this record reveals, there are many conflicting titles due to this overlap that will most probably be vitally affected by the decision in this case" (App. p. 35b). The issue, therefore, is not intent, but power; not what the parties wanted, but whether a State court had the jurisdiction to "establish," "fix" and "determine" the boundaries of Federal townships. We urge that this is a matter of Federal consequence.

II. THE PRECEDENTS DEMONSTRATE THAT THE CASE PRESENTS A FEDERAL QUESTION.

Respondents have trouble with the cases. *Cragin* v. *Powell,* 128 U.S. 691 (1888), which involved these very Federal Townships and surveys, and which is crystal clear for the proposition that the courts have no jurisdiction to redraw such Townships and surveys, they pass off as *"obiter dictum"* (Res. Br. p. 14). *Lanfear* v. *Hunley,* 71 U.S. 204 (1866), they cite as a case involving a decision by the Louisiana Supreme Court determining the location of a boundary. What they fail to point out is that *Lanfear* involved particular legislation—"An Act for the Relief of Ambrose Lanfear of Louisiana," Act of July 18, 1856, 11 Stat. 473—which "gives to the settlers upon the land, in express terms, the right to institute and maintain the litigation necessary to enable them to test the validity of the surveys" (71 U.S. at 208). There is no similar statute

here. And, as the respondents point out, *White* v. *Loevy*, 174 U.S. 91 (1899) was "based entirely on a construction of the land descriptions in the patents" (Res. Br. p. 20), not on any overlap, attempt to correct Federal Township boundaries, or a challenge to Federal surveys.[1]

Finally, Respondents' analysis of *Graham* v. *Gill*, 223 U.S. 643 (1912), misses the point. There this Court did hold that the State Court judgment involving the Federal system "as to the mode of surveying public lands" presented a Federal question. This was based, as the Court's own reference makes clear, on Rev. Stat. § 2396 (1875), as amended, now 43 U.S.C. § 752, which is precisely the statutory provision upon which we rely. That statute provides that the Federal surveys " . . . shall be established as the proper boundaries of the sections . . . for which they were intended. . . . " This, as *Cragin* v. *Powell* recognized, is the foundation stone of the Federal survey system.

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[1] Respondents also cite Section 38 of *Clark on Surveying and Boundaries* (3d Ed. 1959) for the proposition that "questions with respect to the matter of boundaries established by government surveys are strictly a matter of state law." (Res. Br. p. 20). In fact, Section 38 of *Clark* sets out the very principle Petitioners have presented—that Federally-surveyed boundaries may not be amended by the State, or even by the Department of Interior, once the land has passed to private hands. *Clark* states that:

> "Neither acts of congress nor of the state legislature nor even consent of adjoining landowners change the location of corners of federal surveys once established after the land has been sold and is in private hands. Nor can new corners be created if the site of the old corners is lost. All that can be done in such circumstances is to use proper methods of establishing where the original corners were first located." (*Clark on Surveying and Boundaries* § 38 p. 47 (3d Ed. 1959))

III. PETITIONERS RAISED THE FEDERAL QUESTION AND THE COURT OF APPEAL DECIDED IT.

Petitioners contended at every appropriate level of this proceeding that the Louisiana courts lacked jurisdiction to change the Federal surveys referred to in the lease contract. The Court of Appeal quoted Petitioners' argument at length in its opinion before ruling explicitly on the Federal issue (App. p. 40b). It noted that:

> "Counsel for defendants-appellees contend that the court has no jurisdiction to recognize a common range line as a boundary between Section 13, Township 20 South, Range 17 East and Section 110, Township 20 South, Range 18 East for it would in effect be changing the surveys of the public lands as made by Foster and Walker, Connelly or Gorlinski. In their brief counsel state:
>
> 'Under the express ruling of the United States Supreme Court in Cragin v. Powell, supra, and the numerous pronouncements of the Louisiana Supreme Court in Leader Realty Company v. Lakeview Land Company, supra, and State v. Aucoin, supra, the Courts are without jurisdiction to change surveys of the public lands. The surveys therefore cannot be changed so as to conform to plaintiffs' "interpretations".'" (App. p. 40(b).)

The Court then quoted at length from *Cragin* v. *Powell, supra,* but rejected its rule of Federal preemption as to Federal surveys, concluding, erroneously, as our petition demonstrates, that *Cragin* did not apply. When a State court considers and passes on the Federal issue, further inquiry as to how the issue was raised is irrelevant. *Whit-*

ney v. *California*, 274 U.S. 359, 360-1 (1927); *Manhattan Life Ins. Co.* v. *Cohen*, 234 U.S. 123, 134 (1913); *Raley* v. *Ohio*, 360 U.S. 423, 436 (1959). In this case, the question was presented and it was decided—contrary to Federal law.

We respectfully submit therefore that the issue should be authoritatively resolved by this Court and that the writ should issue.

Respectfully submitted,

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